DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
ARMY CORPS OF ENGINEERS CENTRE
190 FIFTH STREET EAST
ST. PAUL, MN 55101-1638

August 9, 2001

REPLY TO
ATTENTION OF
Construction-Operations
Regulatory (01-05914-DJP)

Mr. Gerald Stadler
Rock County Engineer, Planning Department
Rock County Courthouse
51 S. Main Street
Janesville, Wisconsin 53545

Dear Mr. Stadler:

We have reviewed information about a project of the Clinton Community School District to complete stormwater drainage improvements that would outlet to a tributary to Little Turtle Creek. The drainage improvements would include the excavation of new drainage ditches, dredging of the tributary to Little Turtle Creek, and the potential conversion of an existing wetland/farmed wetland area to a stormwater management pond. The project site is in Secs. 8, 9, 10, and 11, T. 1N, R. 14E, Rock County, Wisconsin, as shown on the attached drawing or map.

This jurisdictional determination takes into consideration the U.S. Supreme Court's decision in Solid Waste Agency of Northern Cook County v. Corps of Engineers (the SWANCC decision). The area encompassed by this jurisdictional determination is limited to the wetland/farmed wetland that would converted to a stormwater management pond. The impacted wetland/farmed wetland is approximately 15 to 20 acres in size.

The wetland/farmed wetland is not a "water of the United States" because it is: (1) not a navigable water, (2) not an interstate water, (3) not part of a tributary system to 1 or 2, (4) not a wetland adjacent to any of the foregoing, and not an impoundment of any of the above. In addition, the interstate commerce nexus to this particular waterbody is insufficient to establish Clean Water Act jurisdiction. This waterbody is therefore not subject to regulation by the Corps of Engineers under Section 404 of the Clean Water Act. Therefore, the discharge of dredged and/or fill materials within this wetland is not subject to Corps of Engineers permit requirements.

The existing tributary to Little Turtle Creek that would be dredged as part of this project is a water of the United States subject to Corps jurisdiction. However, during a July 19, 2001, meeting with Dale Pfeiffle of our Waukesha, Wisconsin, office you indicated that the dredging of the tributary to Little Turtle Creek would be accomplished in a manner that would not require the sidecasting of dredged materials into adjacent wetlands. You indicated that the dredged materials would be placed directly upon, or hauled directly to adjacent upland disposal areas.

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The proposed drainage ditch connecting the existing stormwater management basins at the Clinton High School to the tributary to Little Turtle Creek would be excavated through uplands. The excavated materials would be disposed of over the adjacent upland cropped fields.

The dredging of Little Turtle Creek and the excavation of connecting ditches as described above is not within the regulatory jurisdiction of the Corps of Engineers. No work will be done in a navigable water of the United States, and no dredged or fill material will be discharged in any water of the United States, including wetlands. Therefore, a Department of the Army permit is not required to do this work.

This letter is valid only for the project referenced above. It is based on the Headquarters guidance available to us at this time. If any change in design, location, or purpose is contemplated, contact this office to avoid doing work that may be in violation of Federal law. PLEASE NOTE THAT THIS CONFIRMATION LETTER DOES NOT ELIMINATE THE NEED FOR STATE, LOCAL, OR OTHER AUTHORIZATIONS, SUCH AS THOSE OF THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES OR ROCK COUNTY.

If you have any questions, contact Dale Pfeiffle in our Waukesha office at (262) 547-0868. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,

for Robert J. Whiting
Chief, Regulatory Branch

Enclosure

Copy furnished to:

Mike Halsted, WDNR, Janesville, WI
Lois Simon, WDNR, Madison, WI